

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**RE: INVESTIGATION REGARDING
SERVICE QUALITY GUIDELINES
ESTABLISHED IN DTE 99-84**

DTE 04-116

**INITIAL COMMENTS OF THE UTILITY WORKERS UNION OF AMERICA
AND UWUA LOCALS 273, 369 AND 654**

EXECUTIVE SUMMARY

The Utility Workers Union of America (“UWUA”) and its three Massachusetts Locals — Local 273, representing Bay State workers; Local 369, representing NSTAR workers; and Local 654, representing NGRID workers — see this as an important proceeding for Massachusetts utility consumers. UWUA’s members carry out the full range of utility jobs: inspecting substations; repairing gas lines; answering billing inquiries and customer complaints; and responding to emergencies such as power outages, gas leaks and explosions, and stray voltage incidents. Many of their jobs are very dangerous. UWUA’s members are particularly concerned about protecting worker and public safety.

As the industry has undergone restructuring and mergers, UWUA members have seen staffing levels cut and investments in basic maintenance and repairs curtailed. This service quality docket is one of the primary routes through which the Department can ensure that service quality does not decline due to restructuring and the ongoing effects of past mergers and takeovers. The Department can and must fine-tune the existing service quality rules to make sure that all companies provide safe, dependable and high-quality service to their customers.

UWUA’s highest-priority recommendations are as follows:

First, the Department must review service quality much more rigorously. To date, the Department’s reviews of service quality reports have been highly perfunctory. In the future, the

Department must allow parties such as the Attorney General, UWUA and others the ability to conduct appropriate discovery and, where merited, to engage in hearings. The procedures used to date give the appearance of being designed to effectively exclude public participation and favor the interests of industry.

Second, the Department must adopt and enforce staffing level benchmarks. The Department is unquestionably obliged by law to set benchmark staffing levels. But the Department has implemented this requirement with vague and circular language, stating only that “staffing levels will be determined consistent with G.L. c. 164, §1E(b), primarily by collective bargaining agreements, and on a case by case basis.” Companies have filed SQ reports clearly showing significant staff reductions, without any comment or sanction by the Department and without any investigation as to whether such reductions are consistent with collective bargaining agreements or otherwise allowed by law.

Third, the Department should adopt non-punitive inspection and maintenance (I&M) guidelines for utilities. More states are taking this approach to ensuring the quality of service in a deregulated environment. I&M guidelines have several advantages compared to the existing SQ reporting and penalty system: guidelines are easier to monitor and administer for the DTE; companies avoid paying penalties (although also cannot earn incentives); guidelines help to avert or minimize outages and other degradations in service quality in advance, thereby saving consumers from losing their utility service or experiencing other problems.

The Department has thus far built a basically sound structure of service quality standards for such key measures as outages, responding to odor calls, telephone response time, etc.

Companies have complied by routinely filing their reports. But now the Department must commit the necessary resources, through its own staff and by allowing fuller public participation, so that the SQ reports are thoroughly reviewed and carefully investigated, especially in regard to results that reflect anomalous or sub-standard results. The Department must also strictly enforce the benchmarks that have been established; revise upward any benchmarks that experience shows are too easy to achieve; and finally adopt real and enforceable benchmarks for staffing levels.

I. INTRODUCTION

By order dated December 13, 2004, the Department of Telecommunications and Energy (“Department”) opened an investigation into the service quality (“SQ”) guidelines (“Guidelines”) first established in docket DTE 99-84.¹ The Department had noted in DTE 99-84 that it intended to review the SQ Guidelines at the end of an initial three-year period. This current docket constitutes that three-year review.

The Department has identified ten specific topics on which parties are invited to comment. The Department invites comments on other topics as well. Vote to Open Investigation (“VOI”), pp. 2 -3.

The Utility Workers Union of America (“UWUA”) and three of its Massachusetts locals welcome the opportunity to file comments on SQ Guidelines. UWUA represents approximately 50,000 workers at electric, gas and water utilities nationwide performing a broad range of generation, transmission and distribution functions, from maintaining electric lines and installing gas lines, to preparing bills and answering phones. UWUA Local 273 represents workers at Bay State Gas Company; Local 369 represents workers at NSTAR; and Local 654 represents NGRID employees. These several thousand Massachusetts UWUA workers have experienced first-hand the cutbacks in staffing levels and related cutbacks in inspection, maintenance and repairs that have occurred at many distribution companies as they have undergone corporate mergers and restructuring.

UWUA provides detailed comments below on most of the topics listed in the Department’s Vote to Open Investigation and addresses other topics related to service. In this

¹ DTE 04-116, Vote to Open Investigation.

introduction, UWUA emphasizes three points it considers of highest priority:

- First, **the Department must review service quality much more rigorously.** To date, the Department's reviews of service quality reports have been highly perfunctory. For example, the Department's review of the 2003 service quality reports filed by fourteen different companies is contained in a 3 ½ page letter order (DTE 04-12 to 04-25, Oct. 22, 2004)("DTE 04-12 Letter Order"). The Department ignored a request of the Attorney General to allow interventions, discovery and evidentiary hearings. In its order, the Department neither commented on nor even noted the filing of the Attorney General's request. The Department also did not note or respond to any of the extensive comments filed by UWUA. Notably, the 2004 SQ order allowed Massachusetts Electric Company to receive incentive payments of \$3.8 million and imposed no penalties on any company. These procedures give the appearance of being designed to effectively exclude public participation and favor the interests of the reporting companies.

- Second, **the Department must adopt and enforce staffing level benchmarks.** The Department is unquestionably obliged to ensure that companies do not "engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, unless such are part of a collective bargaining agreement . . . or with the approval of the department following an evidentiary hearing." G.L. ch. 164, § 1E(b). The Department has implemented this requirement with vague and circular language, stating only that "staffing levels will be determined consistent with G.L. c. 164, §1E(b), primarily by

collective bargaining agreements, and on a case by case basis.”² Yet companies have filed SQ reports clearly showing significant staff reductions, without any comment or sanction by the Department and without any investigation as to whether such reductions are consistent with collective bargaining agreements or otherwise allowed by law.³

- **Third, the Department should adopt non-punitive inspection and maintenance (I&M) guidelines for utilities.** More states are taking this approach to ensuring the quality of service in a deregulated environment. I&M guidelines have several advantages compared to the existing SQ reporting and penalty system: guidelines are easier to monitor and administer for the DTE; companies avoid paying penalties (although also cannot earn incentives); guidelines help to avert or minimize outages and other degradations in service quality in advance, thereby saving consumers from losing their utility service or experiencing other problems.

UWUA urges the Department to carefully consider and respond to its recommendations on these three key issues of: (i) following better and more open procedures for reviewing service quality; (ii) setting and enforcing actual, numerical benchmark staffing levels; and (iii) adopting

² DTE 99-84-B (Sept. 28, 2001), p. 12.

³ For example, Bay State’s SQ report for 2003 shows a total “FT (full-time) head count” of 920 in 1997, and 57 part-time. As of 2003, the FT head declined 35%, to 592. Part-time staffing declined to 24 in 2003, or more than 50% from 1997. UWUA noted these declines in the comments it filed in the SQ dockets, but the Department did not investigate these apparent violations of G.L. ch. 164, § 1E(b) or note that UWUA filed comments.

I&M guidelines.

II. RESPONSES TO TOPICS RAISED BY THE DEPARTMENT

A. Offsets Allow for Non-Compliance with Important Standards.

The Department asks whether the allowance of offsets, under which companies can offset superior performance in a particular area against sub-standard performance in another area, provides adequate incentives to improve performance and should be continued.

UWUA believes that offsets undermine the purpose of service quality standards. When offsets are allowed, a company can choose not to address sub-standard performance in one area because it knows it can easily exceed the benchmark in another area and obtain the offset needed to avoid a penalty. For example, the Department itself notes that the benchmark of responding to 95% of odor calls within one hour is “an obtainable goal for all gas LDCs.” VOI, p. 2, # (2). Unless the 95% benchmark is revised upward, every gas LDC knows that it can fail to achieve one of its other benchmarks, to the extent it would be offset by exceeding the 95% odor call benchmark. The Department’s DTE 04-12 Letter Order makes clear that this precise offset in fact routinely occurs. In 2003, Boston Gas failed to meet its benchmark in Lost-Time Accident Rate, a key concern for UWUA’s members who sustain many work-related injuries, but offset the penalty that it otherwise would have paid because it “exceeded its benchmark in Odor Calls Response.” Similarly, “Essex [Gas] reports that, for the second consecutive year, it failed to meet its benchmark in Telephone Answering, but that it exceeded its benchmark in Consumer Division Cases, Lost Time Accident Rate, and Odor Calls,” resulting in no net penalty.⁴ The Essex situation highlights the fact that a company can fail to meet a particular benchmark year

⁴ DTE 04-12 Letter Order, p. 2.

after year yet incur no penalty by using offsets.

Similarly, as companies continue to install automated meter reading devices, it becomes much easier to achieve the benchmark for on-time meter readings. Superior performance in this area can then be used to offset consistently sub-standard performance in another area, for example, lost-time accident rate.

The Department should recognize that allowing offsets is a flawed approach. It should not be continued.

B. Odor Calls

During 2003, all covered gas companies met or exceeded the benchmark of responding to 95% of all odor calls within one hour. Boston Gas and Essex Gas reported exceeding the benchmark. DTE 04-12 Letter Order, p. 2. NSTAR Gas achieved a 99.39% response;⁵ Bay State had a 97.7% response rate;⁶ and Berkshire reported a 99.8% response rate.⁷ Clearly, the 95% standard is well below what the industry can readily achieve. The Department should revise the standard upward, particularly in light of the fact that companies use their easy-to-achieve excess performance relative to the 95% standard as a means to offset substandard performance in other areas. UWUA recommends that the Department consider a 98% response rate for this key public safety measure, subject to comment by the Companies.

⁵ NSTAR Gas 2003 SQ Report (March 1, 2004), Form A, in DTE 04-23.

⁶ Bay State 2003 SQ Report (March 1, 2004), Section Three - Page 7, in DTE 04-12.

⁷ Berkshire 2003 SQ Report (March 1, 2004), Form A, in DTE 04-13.

C. The Department Must Implement and Enforce Statutorily-Mandated Staffing Levels

UWUA has long argued that the Department must adopt a staffing level benchmark that fully complies with the statutory mandates of G.L. ch. 164, §§ 1E (a) & (b), 1F(7).⁸ The law could not be clearer that the Department must adopt staffing level benchmarks:

. . . [T]he department shall establish service quality standards for each distribution, transmission and gas company, including, but not limited to, standards for customer satisfaction [,] service outages, distribution facility upgrades, repairs and maintenance, telephone service, billing service, and public safety, **provide, however, that such service quality standards shall include benchmarks for employee staff levels and employee training programs for each distribution, transmission and gas company.**

G. L. ch. 164, § 1E (a).

In complying with the service quality standards and employee benchmarks established pursuant to this section, a distribution, transmission or gas company that makes a performance based rate filing after the effective date of this act **shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997**, unless such are part of a collective bargaining agreement . . . or with the approval of the department following an evidentiary hearing

G.L. ch. 164, § 1E (b) (emphasis added).

Staffing levels have a close connection with efforts companies make to inspect and maintain their systems and to keep up with needed repairs, which is why the legislature has so clearly voiced its concern that staffing levels be maintained. As the Restructuring Act states in

⁸ In the initial service quality docket, DTE 99-84, UWUA filed comments on staffing level benchmarks throughout the proceeding: Initial Comments (Dec. 3, 1999), pp. 28-29; Reply Comments (Dec. 12, 1999), pp. 6-7; Further Comments (Dec. 13, 2000), pp. 7-8 (noting that many collective bargaining agreements do not address staffing levels and, therefore, that Department's statement that "in-force collective bargaining agreements will determine staffing levels" is at least in part a *non sequitur*); UWUA letter dated July 19, 2001 (arguing that staffing benchmark language in DTE 99-84 order does not comply with statute); Opposition to Bay State Motion (Oct. 31, 2001) (opposing Bay State's request that it not be required to file benchmark staffing levels); UWUA letter comments on NSTAR SQ filings (Nov. 9, 2001), pp. 2-3; UWUA letter comments on Bay State SQ filings (Nov. 14, 2001), p. 2.

its preamble:

Since reliable electricity service depends on **conscientious inspection and maintenance of transmission and distribution systems**, to continue and enhance the reliability of the delivery of electricity, the regional network and the commonwealth, **the department of telecommunications and energy should set stringent and comprehensive inspection, maintenance, repair, replacement, and system service standards.**

St. 1997, ch. 164, § 1(p) (emphasis added).

The risk that companies will cut back on staff in ways that impair service quality is borne out by economic theory and practical experience. As a NARUC-sponsored study notes about restructuring, performance-based rates and long-term rate caps:

The potential problem here should be obvious: . . . the utility may be tempted to achieve false cost savings **by deferring maintenance, reducing service personnel, or engaging in some other type of cost cutting that reduces some measure of performance.**⁹

In practice, widespread outages in the NSTAR Electric service territory during the summer of 2001 were connected by the company itself to inadequate staffing levels and huge backlogs in maintenance practices:

Specifically, the Company's internal and external assessments arrived at the following conclusions [regarding the 2001 "decline in service reliability"]:

.....
Maintenance Practices and Spare Inventory: NSTAR Electric has identified a need to ramp up its inspection and repair and maintenance efforts.

.....
Adequacy of Field Staffing Levels: NSTAR Electric has determined that field staffing levels were not at an optimal level this past summer. . . . [T]he company has implemented a number of measures to increase its available resources, including hiring and training new employees in operational areas.¹⁰

⁹ "Performance-Based Regulation in a Restructured Electric Industry," prepared by Synapse Energy Economics, Inc. for National Association of Regulatory Utility Commissioners (Nov. 8, 1997), at 37.

¹⁰ "NSTAR Electric Company Report to the Department of Telecommunications and Energy D.T.E. 01-65" (Oct. 29, 2001), Exec. Summ., pp. ii-iii. ("NSTAR Report").

Between July 1999, one year after the Restructuring Act took effect, and August 2001, the number of “open tickets” identifying needed “corrective maintenance” measures grew approximately **six fold**, and the number of manhours required to catch up with this maintenance backlog grew **ten fold**, according to NSTAR’s own study.¹¹ Inadequate staffing clearly led to serious reductions in inspection and maintenance efforts and a virtual explosion in backlogged repair work, a leading contributor to the summer 2001 outages, as NSTAR itself concluded.

NSTAR is not the only company where cutbacks in staffing levels have been clearly tied to service quality problems. Bay State reports that its “full-time head count” declined from 950 in 1998, the first full year that the Restructuring Act was in effect, to 592 as of 2003. The decline in part-time staff was even more precipitous, from 52 (1998) to 23 (2003).¹² The largest percentage declines were from 2000 to 2001 and from 2001 to 2002.

Starting in 2003, Bay State’s reported response time to customer calls plummeted. UWUA Local 273 brought this sub-standard performance to the Department’s attention on several occasions.¹³ Bay State and its New Hampshire affiliate Northern Utilities share a

¹¹ NSTAR Report, Vol. 2 of 3 (“Internal Assessment Report”), App. B (“High-Level Assessment Study of NSTAR Infrastructure and Practices”), at 6, 56. The Report shows that “Open Tickets - Corrective Maintenance” increased from just under 2,000 (6/99) to almost 12,000 (8/01), and that “Manhours Required - corrective maintenance” increased from around 3,000 to over 25,000.

¹² Bay State SQ Report in DTE 04-12, Section Two - Page 4.

¹³ Local 273 sent letters to then-Chairman Vasington on April 16, 2003 (noting that **telephone response time had fallen in February 2003 to 46.6%** of calls answered within 30 seconds, against a benchmark of 80%, and that even the 46%.6 number might have been inflated) and May 20, 2003 (noting that the March telephone response rate was **only 44.9% of calls answered in 30 seconds**); and a letter to all four then-commissioners on August 13, 2003 (noting that Bay State had substantially missed the telephone response standard for five straight months).

common call center in Springfield, Massachusetts, so that the telephone response rate for each company is the same. The New Hampshire Public Utilities Commission, which regulates Northern Utilities, took prompt action and fined Northern tens of thousands of dollars.¹⁴ The NHPUC drew a direct connection between the staffing cutbacks at Bay State/Northern and the declining telephone response rates. The Maine Public Utilities Commission opened a management audit into Northern and concluded that there were several weaknesses at the company.¹⁵ In stark contrast, the Department took no action whatsoever. This is particularly troubling given that the call center is located in Massachusetts and Bay State is the larger company by far.¹⁶

It is not at all surprising that the regulated companies have consistently sought to evade the imposition of staffing level benchmarks.¹⁷ Many companies consider staffing levels a

¹⁴ By letter dated August 13, 2003 to the NHPUC, Northern Utilities noted that it was including a \$5,000 check to cover the penalties incurred for failure to meet the telephone benchmarks in June 2003 (NHPUC DG 01-182); its July 1, 2003 cover letter also noted the enclosure of a \$5,000 penalty payment check for the May 2003 period (NHPUC DG 01-182); and its April 24, 2003 cover noted that the company owed \$15,000 in penalty payments for January through March 2003 (NHPUC DG 01-182).

¹⁵ See Maine PUC 2002-140 (May 16, 2002). In that Order, the PUC noted the “call center performance problems that could not be successfully resolved by the [Consumer Division], a high level of estimated billing complaints, and **merger related staff cuts and local facilities closures** [emphasis added].” The PUC directly tied the service quality problems to “successive post-merger cuts in staffing levels and local facilities closures.”

¹⁶ Local 273 also was aware that Bay State cut back on the rate of main replacements during 2002 and forwarded that information to the Department at a meeting with Commissioners. The 2002 main replacement rate was between 34% and 53% of the rate that the company replaced mains during the years 1999 to 2001.

¹⁷ In DTE 99-84, Bay State sought clarification that it need not adopt staffing level benchmarks because it had not adopted a performance-based rate plan. “Motion for Clarification” (Oct. 22, 2001). The Department rejected that request, relying in part on its general

management prerogative, despite the legislative mandate for the Department to adopt staffing level benchmarks.

UWUA finds it much more troubling that the Department itself has tolerated massive staff reductions, and consequent problems with outages, telephone response and other service indicia, with little in the way of investigation or sanctions. As noted above (n. 3), Bay State has cut its full-time staff by approximately 35%, and has clearly disclosed this fact in its filings. Local 273 has raised these staffing cuts in several letters to the Commission and in its April 21, 2004 comments in DTE 04-12, Bay State's SQ docket. The Department has never formally investigated or commented on these staffing level cuts, or even noted that Local 273 flagged the issue for further review. Similarly, Boston Edison own 2003 SQ report notes a decline of 287 union workers from 1997 to 1999, or approximately 15%, as well as a further decline from 1999 to 2000 due to the merger with the Commonwealth Energy System.¹⁸ As noted previously, NSTAR's own internal assessment connected the widespread outages of 2001 to a huge backlog of maintenance tickets, which in turn arose from staffing cutbacks. The Department has taken no action to force any NSTAR company to comply with specific staffing level benchmarks.

If anything, the Department's Vote to Open Investigation opens the door to the very results the companies have long wanted: explicit disavowal of staffing benchmarks by the Department, or emasculating those standards due to "the lapse in time" or lack of detailed definition of "staffing levels." VOI, p. 2, #(3). UWUA addresses each of the points raised by the

supervisory powers over utilities (G. L. ch. 164, §§ 76, 93) and the mandate in G. L. ch. 164, § 1F(7) to ensure that service quality does not decline below levels that existed on November 1, 1997. Department's May 28, 2002 letter ruling.

¹⁸ Boston Edison SQ Report in DTE 04-15, App. 11.

VOI below.

First, the Department should define staffing levels to include all of a company's union and non-union employees. The goal of the statutory mandate that the Department set staffing level benchmarks is to ensure "reliable electric service" by making sure there are enough personnel to perform "inspection, maintenance, [and] repair" functions. St. 1997, ch. 164, § 1(p). While union members may benefit from the imposition of staffing level benchmarks, the Department's primary focus should be on consumers, and, therefore, on staffing levels in all area, union and non-union. In the past, Local 273 has commented on the fact that cutbacks by Bay State in management positions has in fact hindered service quality and even potentially threatened public safety. The Department should not ignore cutbacks in management positions. UWUA has never questioned the fact that an adequate level of management staff is required to ensure service quality, just as it has consistently urged that the Department ensure adequate staffing levels in unionized positions.

Similarly, while the legislature has not defined what "staffing level" means in the context of companies that have affiliates or that go through mergers (VOI, p. 2, #3)), the Department can certainly adopt reasonable rules on a case-by-case basis. For example, a regulated gas company that used to have a repair and service department but transfers those employees to an affiliate could be found in compliance with the staffing level benchmark if the regulated company still has the same number of employees carrying out key functions such as maintaining lines, answering phones, sending customer bills, etc. Conversely, a company that goes through a merger and lays off 20% of its staff might be found in violation of the staffing level benchmark if it in fact has far fewer employees answering phones and cannot convince the department that the

staffing cuts will not affect response to customer calls.¹⁹ In general, the department should be reviewing staffing levels in all departments and functions because cutbacks in any area can affect service quality. Conversely, cutbacks can be approved if the company meets its burden of proving that they do no impact service quality.

The Department also raises the question “whether the lapse in time” (between enactment of the statute and adoption of a performance-based rate) negates the November 1, 1997 requirement. The answer must be “no,” as a matter of decided case law before the department and also as a matter of sound public policy. In DTE 99-84, Bay State specifically sought the Department’s ruling that “staffing level benchmarks based on staffing levels in existence on November 1, 1997” would not apply to Bay State because it has not yet filed a performance-based rate plan.²⁰ Bay State again asserted this point in its actual Service Quality Plan by including a footnote that read, “Bay State maintains that G. L. ch. 164, § 1E(b) exempts it from the requirement that distribution companies submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997.”²¹

The Department squarely rejected Bay State’s request, which was based on the company’s strict reading of G. L. ch. 164, § 1E(b), and noted:

There are, however, multiple sources of the Department’s authority to investigate a distribution company’s staffing levels and to include an SQ measure for staffing levels. First, the Department has broad and general supervisory powers over distribution companies pursuant to G. L. ch. 164, §§ 76 and 93. This includes the power to insure that

¹⁹ See G. L. ch. 164, § 1E(b) (burden on the company to prove that staffing cuts will not affect service quality).

²⁰ “Motion for Clarification” (Oct. 22, 2001).

²¹ Department’s May 28, 2002 Letter Ruling in DTE 99-84, p. 3.

distribution companies retain sufficient numbers of employees to guarantee a safe and secure supply of gas and electricity and to provide adequate customer service. In addition, G. L. ch. 164, § 1F(7) directs the Department to oversee quality and reliability of service and to require that quality and reliability are the same as or better than levels that exist on November 1, 1997.²²

The question that the Department has raised in the December 13, 2004 VOI has been already asked by Bay State and answered in the negative by the Department itself. The issue, which was fully litigated in DTE 99-84, should not be relitigated here.

Even if the Department decides to revisit this question, it should come up with the same answer it did before. The Department itself made all of the key points. First, it has independent authority in §§ 1F(7), 76 and 93 to supervise companies and make sure that staffing levels do not fall below 1997 levels. The Department's authority does not hinge solely on § 1E(b), even if Bay State's reading of that section is correct. Second, it is good public policy and in the best interests of consumers that "distribution companies retain sufficient numbers of employees to guarantee a safe and secure supply of gas and electricity and to provide adequate customer service." As the Department itself noted, it "has consistently stated that staffing levels are an important element of reliable service and employee safety."²³

UWUA and the public have been waiting seven long years to see meaningful implementation of the staffing level requirements of the Restructuring Act, in terms of the setting of numerical benchmarks below which staffing levels cannot fall without careful investigation and approval by the Department. Rather than backtracking and allowing companies to once again raise arguments as to why staffing level benchmarks should not be adopted or enforced, the

²² Department's May 28, 2002 Letter Ruling in DTE 99-84, p. 4.

²³ *Id.*

Department should finally move forward and carry out the legislature's intent.

D. Standardization

The Department asks whether it makes sense to set benchmarks based on nationwide, regional or statewide data. As UWUA noted in DTE 99-84, it agrees with the notion that many standards (such as those for outages) must be based on a particular company's own geography, customer mix, and distribution/transmission infrastructure. However, there are other areas where UWUA believes the Department can productively move towards a statewide standard. For example, as noted above, UWUA believes that the Department should adopt a statewide benchmark of gas LDCs responding to 98% of odor calls within one hour, both because this is such a critical public safety measure and because there should not be that much variability company to company.²⁴ Similarly, UWUA urges the Department to consider statewide benchmarks for "Consumer Division Cases (CDCs)," or at least thoroughly investigating why there is such variability among companies. As UWUA Locals 273, 369 and 654 noted in their April 21, 2004 comments in the SQ dockets, Bay State has the worst rate of all companies reviewed by UWUA: 1.34 CDCs per thousand customers. NSTAR Gas has half the rate, at .644 per thousand; Commonwealth Electric even less, at .593 CDCs per thousand; and Massachusetts Electric a rate of .51 per thousand. Cambridge Electric reports a rate one-tenth that of Bay State, .126 CDCs per thousand customers. It is not at all apparent why one company should have such

²⁴ UWUA, however, believes that the Department should consider comments that may be submitted by a particular company arguing that it cannot meet the uniform standard, due to its particular geography or for other valid reasons.

a worse rate than other companies.²⁵

Similarly, the Department should consider either a single statewide benchmark, or at least less widely divergent benchmarks, for keeping service appointments. As UWUA noted in its April 21, 2004 comments in the SQ dockets, there is great variability even within the NSTAR companies. Cambridge Electric reports keeping only 83.06% of its appointments, and Boston Edison a comparable 86.36%. Yet NSTAR Gas and Commonwealth Electric respectively report keeping 99.76% and 98.42% of their service appointments. UWUA is not suggesting that the Department can now adopt any particular number, but investigation by the Department may reveal that the differences have more to do with staffing patterns than with inherent differences in the service territories. If the former, then the Department should move to a more uniform benchmark for keeping service appointments. Other areas where more uniform, statewide benchmarks should be considered are call center response and billing adjustments.

E. Customer Service Guarantees

The Department asks whether customer service guarantee payments should be made to customers whether or not the customer requests the credit, and whether the company should classify an appointment as “missed” if the company contacts the customer within four hours of the missed appointment and reschedules it.

UWUA was the party that first raised the idea of customer service guarantees in DTE 99-84.²⁶ In its August 17, 2000 Order, the Department noted that “UWUA’s proposal [is] worthy of

²⁵ One company, Boston Edison, is somewhat close to Bay State, at 1.211 CDCs per thousand customers.

²⁶ UWUA’s Initial Comments (Dec. 3, 1999), pp. 10-11, 22-23.

further investigation” and solicited further comments. As UWUA noted in additional comments on customer service guarantees:

Both in theory and practice, the mere act of making payments or offering credits to specific customers, no matter how small the amount, draws management’s attention to problems that can and should be fixed. Unlike other penalty mechanisms that can involve hard-to-establish benchmarks, hearings before the Department, appeals to court, and a significant lag between the initial customer harm and imposition of a penalty, customer service guarantees result in prompt payments to harmed customers, with little, if any, involvement of the Department once the guarantees are established.²⁷

Given these purposes, it makes no sense to condition actual payment on a request from the harmed customer. It is unlikely that many customers are aware of their right to request customer service guarantee payments. Further, the amounts currently paid by companies are trivial.²⁸ There is no reason to lessen the companies’ already light burdens.

UWUA does not object to a company being able to avoid the payment if it calls the customer in advance of the appointment and reschedules the appointment at a time convenient to the customer. However, UWUA suggests that the call should be made at least eight hours, not four hours, in advance. Calling a customer, for example, at 11 A.M. to state that the company will miss a 3 P.M. appointment may still result in that customer missing a day of work. Given, again, that few payments are made under the current rules, there is no reason to substantially lighten the companies’ burden in keeping promised appointments.

F. Property Damage

UWUA does not recommend that property damage should be a penalty measure.

²⁷ UWUA Comments (May 24, 2001), p. 4.

²⁸ For example, Bay State reported making 127 payments for a total of \$3,175 in all of 2003. Bay State’s 2003 SQ Report, DTE 04-12, Section 3, Page 9. Commonwealth Electric reported making two payments for a total of \$50.

G. Line Losses and Unaccounted for Gas

The Department asks whether “line losses should be made a reporting requirement in the future guidelines.” VOI, p. 3, #(8).²⁹ Electric companies already report their line losses on their annual SQ forms.³⁰ In its April 21, 2004 comments in the SQ docket (pp. 7-8), UWUA noted that both Commonwealth Electric and Boston Edison reported 2003 line losses higher than their ten-year average losses (6.2% and 7.5%, respectively). UWUA further noted that Massachusetts Electric reported line losses of only 4.79% and Cambridge Electric only 3.4%.³¹ UWUA urged the Department “to explore why the line losses for Commonwealth Electric and Boston Edison are so high.”³² UWUA does not currently propose that line losses should be a benchmarked penalty measure, given the dearth of information about why this figure varies from company to company and year-to-year within any one company. However, UWUA again urges the Department to investigate the above-average 2003 line losses for Commonwealth and Boston Edison, and also investigate why these companies have much higher losses than Massachusetts Electric. It should routinely investigate such excessive line losses. The failing to do so turns the SQ process into a sham proceeding.

²⁹ UWUA believes this may be a typographical error and that “reporting requirement” perhaps should read “penalty measure” because electric companies already report their line losses on Form B.

³⁰ See, e.g., Boston Edison’s 2003 SQ Report, Form B, “line loss” of 7.5% for 2003, compared to 10 year benchmark of 6.3%.

³¹ However, and as UWUA noted in its April 21, 2004 comments, “it is possible that this [Cambridge Electric’s performance] is due to the fact that much of the company’s distribution system [may be] underground, given the density of the City of Cambridge.”

³² The Department did not respond or even note the fact that UWUA raised this issue, in its October 22, 2004 Letter Order in the SQ dockets.

Just as the Department should investigate above-average line losses for electric companies, it should pay similarly close heed to reports of above-average “unaccounted for gas” by gas LDCs. In their April 21, 2004 comments (p. 4) in the 2004 SQ dockets, Locals 273/369/654 noted that Bay State’s 2003 level of “unaccounted for gas” was 2.5 times the reported mean, without any explanation by the company about why the number had soared so high. The Locals asked the Department to investigate, but the Department did not even note the Locals’ request. The Department should routinely investigate SQ reports that show unusually high levels of “unaccounted for gas.”

H. Double poles

The Department aptly notes that prompt removal of double poles is required by G. L. ch. 164, § 34B. The Department opened a separate docket, DTE 03-87, to solicit comments and prepare a “report to the Committees on Ways and Means and the Joint Committee on Government Regulations relative to reducing the number of double utility poles within the Commonwealth.”³³ As of November 28, 2003, the Department recommended “that a penalty mechanism not be implemented [for failure to promptly remove double poles] until there is additional experience with the operation of the P[ole] L[ifecycle] M[anagement]” system.³⁴ The Department did, however, require semi-annual reports on the status of double poles.

In light of the proceedings in DTE 03-87 and the ready availability of data on the status of double poles, UWUA recommends that companies should be required to include in their annual SQ reports data on the current number of double poles and the number from 12 months prior.

³³ DTE 03-87 (Nov. 28, 2003), p. 1.

³⁴ DTE 03-87, p. 15.

Based on UWUA's limited review of the periodic double pole reports, companies appear to be consistently reducing the backlog of double poles. The Department should consider setting a benchmark of each company further reducing the backlog by a specified percentage per year subject to incurring a penalty, but does not make a specific percentage recommendation here.

I. SAIDI/SAIFI

The Department asks whether companies should be allowed to continue using their own definitions of "sustained outages or interruptions," "momentary outages" and "excludable major events," or whether instead "it is appropriate to develop new definitions for these subjects."

First, all definitions should be completely transparent to all interested parties. Any company that uses its own definitions, which is what companies now do, should provide a clear and concise definition of each of these terms in its annual SQ reports to the Department. Further, companies should not be allowed to change those definitions without explicit Department approval. If companies are allowed to change the definitions, this would make year-to-year comparisons meaningless, or at least very difficult.

Second, the Department should attempt to develop definitions that can be adopted uniformly by all companies to make inter-company comparisons more meaningful. It is not at all apparent to UWUA why, for example, all companies cannot use the same definition of "sustained outage." It would be far easier to make inter-company comparisons if all companies used the same definitions. While it may be impossible to adopt identical benchmarks for all companies (e.g., all electric companies shall have a SAIFI of 1.1 or less), it is still useful to ask why one company has a higher frequency of interruptions than another. While the answer may be that one company has a higher percentage of exposed overhead lines and another a higher percentage of

underground lines, the question cannot even be asked if companies employ different definitions.

III. INSPECTION AND MAINTENANCE GUIDELINES

The Department has invited parties to comment on SQ-related topics not included in the list of “Topics for Investigation.” UWUA’s highest-priority recommendation regarding other service quality issues is that the Department adopt inspection and maintenance (I&M) guidelines for all electric companies.³⁵ The preamble to the Restructuring Act makes it clear that the Department is obliged to “set stringent and comprehensive inspection, maintenance, repair, replacement and system service standards” for electric companies.³⁶ That requirement is reiterated in G. L. ch. 164, § 1E(a), which requires the Department to set standards for “facility upgrades, repairs and maintenance” for both gas and electric companies.

UWUA has long maintained the adoption of I&M guidelines that require each company to routinely inspect and report on the status of needed and completed repairs for key infrastructure components, such as overhead lines, underground lines, substations, and poles. This I&M approach has several advantages for all affected parties. For companies, I&M guidelines remove the onus of penalties, but in exchange the companies must ensure that they are routinely addressing inspection and maintenance needs before problems arise. For consumers, requiring companies to carry out routine I&M means that problems are spotted before they become so serious as to cause widespread outages and other major problems.³⁷ For the

³⁵ While UWUA also believes that gas companies should be required to comply with I&M guidelines, it makes more specific recommendations here for electric companies.

³⁶ St. 1997, Ch. 164, § 1(p).

³⁷ The current benchmark-and-penalty system at best penalizes companies after problems have already occurred and, at tiems, provides token compensation to consumers in the form of

Department, I&M guidelines provide a much easier system to administer, avoiding the calculation and imposition of penalties well after problems have occurred.

California has long had a very simple system of I&M guidelines. Each company must inspect each major component of its system every 1 to 5 years, depending on the location (rural or urban) and the nature of the component (e.g., transformers, switching devices, conductors, and poles).³⁸ Each company files periodic reports confirming that the required inspections have been conducted and reporting on the number of items that have been identified as needing repairs and that were actually repaired. (E.g., “10,000 wooden poles inspected, as required; 967 needing repair; 486 of those actually repaired during the period”). According to the California Commission, the companies readily comply with these requirements and Commission staff easily review the simple reports filed.

The Pennsylvania Commission opened a proceeding on December 11, 2004 (L-00040167) regarding “Adding Inspection and Maintenance Standards for the Electric Distribution Companies,” under a statutory mandate in that state’s Restructuring Act similar to the Massachusetts Restructuring Act.³⁹ The Pennsylvania Commission clearly intends to adopt I&M standards.

Last July, the New York Commission opened a docket seeking comments on a comprehensive staff proposal to require utilities to annually test all of their transmission and distribution lines. That proceeding was opened largely in response to the tragic death of a New

minuscule adjustments to monthly bills.

³⁸ CAPUC Decision 97-03-070 in Investigation 95-02-015 (Mar. 31, 1997).

³⁹ Compare 66 Pa. Cons. St. § 2802(20) with G. L. ch. 164, §1E(a).

York City resident due to a stray voltage problem.⁴⁰ Yet the final order included far more than a mandate to inspect for stray voltage. On January 5, 2005, the Commission issued an Order Instituting Safety Standards. Companies are required to visually inspect, “at a minimum . . . towers, poles, guy wires, risers, overhead cables and conductors, transformers, breakers, switches, and other aboveground equipment and facilities, and . . . the interior of manholes, service boxes, vaults and other underground structures.”⁴¹

There is a growing movement to use routine I&M standards and guidelines as a way to avert serious problems, including of the type that occurred in New York, rather than responding to problems after they occur. Massachusetts should put itself in the forefront of those states that protect the safety of their citizens. The Department should adopt I&M guidelines along the lines of those adopted in New York and California.

IV. CHANGES TO IMPROVE COMPLIANCE WITH AND ENFORCEMENT OF STANDARDS

UWUA has a number of recommendations to improve compliance with and enforcement of service quality standards.

First, the Department should be willing to intervene between annual reports if service quality at a particular company is seriously degrading. In 2003, Bay State’s telephone response time drastically declined. For five straight months, it answered only 45% to 60% of its calls withing 30 seconds, compared to the benchmark of 80%. UWUA repeatedly called on the Department to intervene, especially in light of the fact that the New Hampshire and Maine

⁴⁰ The Department is well aware of serious stray voltage problems in the Boston area, including the well-covered death of a dog in Charlestown one year ago.

⁴¹ NYPSC Docket 04-M-0159 (Jan. 5, 2005), App. A, Section 4(a), “Inspections.”

commissions, which regulate Bay State's much smaller affiliate Northern Utilities, took aggressive action.⁴² The Department took no action. As a result, Bay State's customers suffered seriously substandard service, with no penalty imposed on the company.

Second, as noted in UWUA's comments above on odor call response time, the Department must seriously consider raising the bar for any particular standard whenever it is clear that a company is clearly meeting and exceeding the standard. While truly superior performance should not be penalized by inappropriately raising the standard, the fact that a company routinely exceeds a particular standard may simply demonstrate that the standard is too low, rather than that the company's performance is truly superior. Again, response time to odor calls may be an example where the standard is simply too low.

Third, the Department should seriously reconsider the current system that limits the maximum penalty a company can suffer if it fails to meet any one particular standard (e.g., SAIFI or meter reads). By allocating the maximum company-wide penalty (2% of service revenues, under G. L. ch. 164, § 1E(c)) among the several penalty categories, the maximum penalty for some measures may be small enough that paying the fine is a cheaper alternative for a company than investing what is necessary to comply. In a sense, the penalties can become like parking tickets are for UPS or FedEx delivery trucks: a nuisance, but not expensive enough to deter the proscribed conduct. UWUA recommends that there be no sub-caps for penalties under each measure, but merely the global 2% cap contained in the statute.

Fourth, and as discussed above, UWUA recommends much more rigorous review of annual SQ reports. This would include allowing parties reasonable discovery and hearing rights,

⁴² Bay State and Northern use the same call center, located in Springfield.

where merited; auditing of company reports, where serious questions of accuracy or completeness have been raised; and meaningful investigation by the Department's own staff.

Fifth, and related to the prior point, UWUA urges the Department to very carefully review each company's annual reporting of problem circuits and to open an investigation whenever the same circuit appears on the list for two consecutive years. While in some cases the "investigation" could be as simple as a cogent and convincing letter explanation from the company, in other cases the Department should impose penalties for a company that wilfully fails to upgrade problem circuits.

Sixth, the Department must investigate the extent to which companies categorize a call that results in a customer getting a busy signal, rather than being placed in the answering cue, as "answered within 30 seconds," "not answered within 30 seconds," or simply excluded completely from its tallies. UWUA believes that companies may be inconsistently categorizing these calls, thereby biasing some of the reports. Similarly, the Department should investigate how companies count calls that go to "IVR"(interactive voice response) because live personnel are not available, as this, too, may bias the reports.

V. CONCLUSION

The Utility Workers Union of America and its Massachusetts Locals 273, 369 and 654 ask the Department to adopt changes to the rules and procedures governing service quality standards and reports, as recommended in these comments.

Respectfully submitted,

Charles Harak, Esq.
77 Summer Street, 10th floor
Boston, MA 02110
617 988-0600
charak@nclc.org

March 1, 2005

C:\Documents and Settings\michael.w.orcutt\Local Settings\Temporary Internet
Files\OLK11D\InitComments3-1-05.wpd